**Collector of Central Excise Vs. Inder Singh and Sons**

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**SooperKanoon Citation** : sooperkanoon.com/15986

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-07-1999

**Reported in** : (1999)(112)ELT417TriDel

**Appellant** : Collector of Central Excise

**Respondent** : inder Singh and Sons

**Judgement** :

1. The respondents herein are engaged in the manufacture of iron and steel products falling under Chapter 72 of the Schedule to the CETA 1985, and are availing Modvat credit facility under Chapter V-AA of the Central Excise Rules, 1944. They availed Modvat credit on MS scrap and steel scrap (re-rolled) falling under CET sub-heading 7204.90 which did not appear to be admissible to a re-rolling mill as scrap falling under the above mentioned sub-heading does not cover an article which could be converted into another article by hot rolling, as per Note 6(A) to Section XV of the Central Excise Tariff Act and the HSN Explanatory Notes at pages 987 and 988. A show cause notice was issued proposing denial of credit, demands were confirmed; the lower appellate authority allowed the appeals filed before him by the assessees, following the Tribunal's decision in the Munoth Industries v. Collector of Central Excise, Hyderabad reported in 1996 (84) E.L.T. 285 (T). Hence these appeals by the Revenue.

2. I have heard Shri S. Srivastava, learned DR and Shri Balbir Singh, learned Advocate.

3. The respondents are a re-rolling mill. They have filed a declaration under Rule 57G declaring the waste and scrap falling under CET sub-heading 7204.90 as one of the inputs for the manufacture of their final products. They have caregorically stated in the reply to the show cause notice and before the authorities below that they are rolling the steels and scrap received by them from various suppliers and in fact the duty demands have been raised on the basis of their own records viz. their RG 23A Part I and Part II registers. The Learned DR's objection to the extension of the credit on the ground that there is nothing to show that the inputs received were actually used by the respondents in their rolling mill is, therefore, unsustainable. In the Tribunal's decision cited supra, it has been held as under : "In the present case both the inputs and the finished products are admittedly notified under Rule 57A. The claim of the appellant is that they are going to use the material received and which has been described by them as re-rollable scrap materials as waste and scrap for the manufacture of the notified finished product. Therefore, the classification of the material that the appellants are going to be received notwithstanding at the supplier's end the eligibility to Modvat will have to be determined at the appellants' end based on their satisfying the authorities about its use in or in relation to the manufacture of the notified finished products in their factory.

The appellants cannot be ruled out the benefit of Modvat credit in case they are able to satisfy the authorities about the end use as above. In the above view of the matter I hold that the learned lower authority was in error in having denied the benefit of Modvat credit to the appellants in respect of the materials which are in the nature of re-rollable materials irrespective of whether they are described as waste or scrap. In sum I hold that so long as the appellants get the materials which are re-rollable and are able to satisfy the authorities that these are being used for re-rolling, the benefit of Modvat credit cannot be denied and I, therefore, allow the appeal in the above terms." 4. The ratio of the above decision squarely applies to the fact of the present cases and in view of the clear unrebutted averment that the inputs received have been used by re-rolling in the manufacture of final products by the respondents herein, and in the face of the fact that the demands have been raised on the basis of the statutory records of the respondents, I hold that there is no infirmity in the lower appellate authority's order. I accordingly uphold the same

and reject the appeals.